CONTENTS

Legal Department File No. 80- Industrial Disputes/ 41.
of 5 -6.

Sr. No.	Compilation No.	Subject	pages.
4.			
		Opinions Under the Bombay Industrial Disputes Act, 1939.	
1.	O.No.1229 10-2-1941.	Sections 3(14);28(1) and Schedule II. Whether a notice of change of work given by the National Mills Ltd. Ahmedabad to the Labour Officer, Bombay relates to an industrial matter mentioned in Sect. II.	1 -2
2.	O.No.1652 21-2-1941.	Bombay Industrial Disputes Rules, 1939 rules 34 to 38. Maintainance of two separate Panels of Employers' and Employees' representatives Under S. 23.	3 -4.
3.	O.No.1828 27-2-1941.	Sections 59(a), 73(2), 77(1), 69, 28(3), 38(4) and Schedule II. Whether the dearness allowance awarded by the Industrial Court would form part of wages falling under them of the Schedule II.	5 -6.
4.	O.No.1924 5-3-1941.	S.28 and Schedule II. whether the transfer by an employer of his employees to the control of a contractor would amount to effecting a change in way of the Industrail matters mentioned in Schedule II.	9 -10
5.	O.No.128. Confl. 14-3-1941.	Sections 3(11) and 69 The Code of Criminal Procedure S. 436. Whether it will be necessary to amend the defination of employer in the Act.	11-14.

6	O. No.162.Confl. 1-8-1941. 4	Whether there is any objection to forwarding copy of H.L.A's opinion No. 128 Confl. dated 14-3-1941 to the Public Prosecutor.	15- 16.
7	O.No.4370 13-5-1941.	Sections 3(29)(iii) and 25(2) Whether the Labour Officer is empowered by section 25(2) to compel the millowners to let the employees hold the meeting in the mill compound.	17- 18.
8.	O.No.6161 15-7-1941.	Sects. 3(19), 28, 34, 38, & 59 Whether the report submitted by the Chief Conciliator Under S. 38(2) should be published by Govt. Under S. 38(4).	25- 26.
9.	O.No.6272 18-7-1941.	Sections 30, 32 and 73 . Whether the change introduced by the E.D.Sassoon Mill to an illegal change Conflt. between the provisions of sections 32 & 73.	27- 28.
10.	O.No.7572 28-8-1941.	Whether the amendment to S.25(2) suggested by the Labour Officer is necessary.	29- 30.
11.	O.No.7571 28-8-1941.	Sections 25, 55 and 73 Whether the Labour Officer is entitled under Sec.25 to enter the premises of a mill and to call for and inspect all relevant documents under S.25(2).	31- 32.
12.	O.No.7055 11-8-1941.	Section 26(1). Whether the recommendations of the Textile Labour Inquiry Committee that textile mills must close work for six hours a day can be given effect to by the amendment of the existing Standing Orders.	33-34.

CONTENTS
Legal Department File No.

Sr. No.	Compilation No.	Subject	Pages.
13.	R.I.No.191-L-d.22-8-1941. O.No.7598, 28-8-1941.	Sections 3, 28, 29 & 62. Whether the employees of other mills in the same industry and in the same local area who had not associated themselves with the dispute under S. 29 can join the strike and if so whether that strike can be considered to be legal.	35- 36.
14.	O.No.8465, 26-9-1941.	Section 3(29) Whether in giving or receiving notices of change, the statements submitted by the Registrar under rule 12 are to be taken as conclusive or whether each case should be examined on its own meri..	37- 38.
15.	O.No.353- Confl.8, 28-11-1941.	Whether in the ter__ of rule 18 of the Bombay Industrial Disputes Rules, The Govt. Labour Officer must proceed to hold meetings of workers in the circumstances mentioned.	39- 40.
16.	O.No.10789, 15-12-1941.	Section 76. Making of Supplementary award applicable to certain Mills - Scrutiny of draft notification in connection with.	41- 46.

This opinion is modified by R.L.A.'s O.No.1828 of 27-2-1941.

It appears that the National Mills Ltd., Ahmedabad, has given the Labour Officer, Bombay, a notice of change intending to work the weaving department by a day shift provided the weavers accept only the weaving rates with 'inam' but excluding the dearness allowance awarded by the Industrial Court and the interim increase in wages recommended by the Textile Labour Inquiry Committee in February 1938. The question for consideration of the Remembrancer of Legal Affairs is whether the change relates to an industrial matter mentioned in Schedule II to the Bombay Industrial Disputes Act, 1938.

2. Section 28(1) of the Bombay Industrial Disputes Act, 1938 lays down that employers or employees desiring a change in respect of any industrial matter mentioned in Schedule II shall give notice of such intention in the prescribed form to the representative of employees; and shall also send a a copy of such notice to the Labour Office. "Industrial Matter" as defined in section 3(14) means any matter relating to work , pay, wages, reward, hours, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment or non-employment and includes matters stated in clauses (a) to (d). Item 9 in Schedule II relates to wages and total weekly hours of work. The expression " wages" is not defined either in the Act or the rules thereunder; in the absence of any definition it will have to be given its ordinary meaning and it will not be proper to rely exclusively upon the definition of the term " wages" in the payment of Wages Act, 1936 for the purpose of interpreting the provisions of the Bombay Industrial Disputes Act. " Wages" as interpreted in the Concise Oxford Dictionary means

an amount paid periodically especially by the day or week or month for time during which workman or servant is at employer's disposal. The dearness allowance awarded by the Industrial Court and the interim increase in wages recommended by the Textile LabourInquiry Committee formed part of wages so far paid to the workers of the National Mills Ltd., Ahmedabad. Consequently the change proposed to be introduced by the National Mills Ltd. relates to an industrial matter mentioned in Schedule II and the notice thereof validly fall under section 28(1). The Labour Officer should therefore proceed further with the notice in question.

Id/--------

Remembrancer of Legal Affairs.

U.R.to the P.S.& D.,No.1229 dated the 10th February 1941.

The assumption at 'A6 on page 217 ante viz. that new panels are to be formed every year is not correct. Rules 34 to 38 of the Bombay Industrial Disputes Rules, 1939 do not provide for any periodical preparation of new panels and all that Rule 38 provides is the annual publication of up-to-date copies of the lists which are to be maintained in the office of the Registrar. Since no new panels are to formed the question of any general fresh selection or of omitting any existing names does not arise under the rules as they stand at present.

Id/--------20/2.

Remembrancer of Legal Affairs.

U.H. to P.R.& S.D., No.1652 dated the 21st February 1941.

DYR.

The main point raised for the consideration of the Remembrancer of Legal Affairs when he expressed the opinion No.1229, dated the 10th February 1941 was whether the dearness allowance awarded by the Industrial Court would form part of wages falling under item 9 in Schedule II to the Bombay Industrial Disputes Act, 1938. The period for which the award was to remain in force was not clearly stated in the previous reference nor was it clear whether the "new hands" or employees affected by the proposed change were or were not entitled to the benefits of the award. It appears clear from the present report of the Chief Conciliator at p.15 ante that the agreement between the parties which formed the basis of the submission lays down that " the relief granted by the Industrial Court shall terminate on the date on which the present European war involving England terminates". It follows therefore that the award granting dearness allowance will be operative till the present war ends. The question raised in these circumstances for consideration of the Remembrancer of Legal Affairs is whether a notice of change in respect of the dearness allowance before the expiry of the period of the award is valid under section 28(2).

2. Section 59(a) of the Bombay Industrial Disputes Act, 1938 provides that the order of the Industrial Court shall be binding on all parties to the Industrial dispute who appeared or were represented before such court. Section 73(2) a says that no employer shall make any such change in contravention of the terms of a registered agreement, a settlement or an award.. Section 77(1) provides that a registered agreement,

ement or award shall cease to have effect on the date specified therein etc. It is therefore clear from these provisions that the award made by the Industrial Court regarding the dearness allowance would be binding on the parties till the termination of the present war and any change made in contravention thereof during the period would be illegal and punishable under section 69.

3. It is no doubt true that under section 28(3) the only restriction on the power of giving a notice of change in the respect of an industrial matter is that it cannot be done before the expiry of two months from the date of completion of the conciliation proceedings. But this provision and section 77(1) have to be read together and reconciled. This point was raised in the Legislative Assembly in the course of the second reading of the Industrial Disputes Bill. The Hon. Mr. K.M.Munshi stated:-

" A registered agreement, settlement or award is an act of parties by which the rights as to the dispute are merged in the agreement, settlement or award. Therefore where an agreement, settlement or award is concerned, no question of change arises, and for six months after notice nothing can be done. Sub-clause (3) clause 28 (section 28(3) of the Act) only applies to cases where no such thing as a registered agreement, settlement or award is an obstacle in the way of giving a notice of change.....Conciliation proceedings as stated in sub- clause (3) of clause 28 can be completed in more ways than one. They may result in a settlement; or they may result in nothing being done. If they result in a settlement, the act of the parties supervenes and clause 77 (section 77) willapply. But if there is no settlement by an act of parties clause 28 sub-clause (3) would apply." (See p.3527 of the Legislative Assembly Debates Vol.IV, Part II, 1938).

Section 77(1) which is a special provision overrides section 28(3) which is a general provision. Consequently the notice of change given by the National Mills Ltd., Ahmedabad in the present case in respect of the dearness allowance awarded by the Industrial Court, being before the expiry of the period of the award, is not valid under section

28(3) and to this extent the previous opinion of the Remembrancer of Legal Affairs may be taken to have been modified. It would not therefore be necessary to publish the report of the Conciliator under section 38(4), the conciliation proceedings being void ab initio.

Id/------ 26/2.

Remembrancer of Legal Affairs.

U.R. to the P & S. D., No.1828 dated the 27th February 194?.

What has been referred to by the Labour Officer, Bombay (in paragraph 3 at page 3 ante) as the transfer of workers appears in fact to involve the termination of one employment and the commencement of another so far as each worker involved in such transfer is concerned. The view expressed by the Commissioner of Labour (in paragraph 3 at page 13 ante) appears therefore to be prima facie correct.

2. The question whether in any particular case such transfer of employment on account of the termination of the previous employment or even when the services may not be terminated but only lent to the new employer, on account of any other cause such as change in wages or in respect of some other industrial matter specified in Schedule II would attract the operation of section 28 of the Bombay Industrial Disputes Act, 1938, so as to require a notice of change, will depend on the facts and circumstances of that particular case. It is not therefore possible to give a general opinion on the point raised.

Id/----------4/3.
Remembrancer of Legal Affairs.

U.R. to P.& S.D., No.1924, dated the 5th March 1941.

DYR.

The reasoning of the City Magistrate, Ahmedabad in his order dated 23rd December 1940 at pages 3-5 ante and particularly that in paragraph 3 thereof is wrong. It is not known whether any steps have, so far, been taken to obtain an order directing further enquiry into the dismissed complaints under section 436, Criminal Procedure Code.

2. The reference to the inclusive definition of "employer" in section 3(11) of the Bombay Industrial Disputes Act, 1938 is in this case unnecessary. The prosecution under section 69 of the Act is directed against any employer who makes any illegal change. In the present case, it appears that the applicant was an ex-worker employed by the Monogram Mills Co. Limited of Ahmedabad. If the applicant had in fact been employed by this Mill, it is immaterial as to who was the person who actually passed the order in respect of which the applicant has moved the Court, for that order must have been passed by or on behalf of the employer Mill by some person acting in the course of his employment; nor would the liability of an employer Mill be in any way diminished merely because under section 3(11)(b) along with that Mill its agent may also incur a similar liability under the Bombay Industrial Disputes Act, 1938(or some other provision of law). Section 69 itself does not refer to any imprisonment and merely because a body corporate cannot be sentenced to imprisonment in default of payment of find that will not justify an inference that the penalty clause itself does not apply at all to all bodies corporate who can certainly be made to pay the fines imposed upon them in the same way as any other persons or individuals. An employer need not necessarily be an individual but may also be a body corporate, e.g., a limited company or a Mill as in this case. The inclusive reference to associations or groups in section 3(11) is intended to cover associations or groups of the employers and since in this case only one Mill is the employer, it is unnecessary to invoke or refer to section 3(11)(a). A corporation aggregate can act only through its servants or agents and it is only

through the acts and defaults of such persons that it can be made criminally liable. A corporation aggregate may be made liable in its corporate capacity for a crime for the punishment of which a fine may be awarded, if the corporation fails to perform a duty imposed by a Statute, or commits, by its servants or agents acting in the course of their employment, an offence of this nature (see Halsbury's Laws of England, Volume IX, page 14 and also Pharmaceutical Society vs. London Provincial and supply Association 1885 A.C.857).

3. Since the view taken by the City Magistrate, Ahmedabad is not correct, it will not be necessary to amend the definition of "employer" in the Bombay Industrial Disputes Act, 1938. As the question is of general importance affecting the administration of the Act it would however be desirable to go in revision against the order of the Magistrate.

Id/------14/3.
Remembrancerof Legal Affairs.

U.R.to P. & S.D. No.128 CONFL. DATEND the 14 the March 1941.

DYR

Office of the R.L.A.

There is no objection to forwarding a copy of R.L.'A's opinion No.128-Confl. dated the 14th March 1941 to the Government Labour Officer, Ahmedabad, for being shown to the Public Prosecutor in connection with the proposed revision application.

Id/--------31/3.

Remembrancer of Legal Affairs.

U.R. to P. & S. D. No.162. Cofl. dated the 1st April 1941.

Issued.

The election of "Representative of employees" as defined in section 3(29)(III) of the Bombay Industrial Disputes Act, 1938 is required by the definition to be held in the prescribed manner. Prescribed means prescribed rules made under the Act. (See section 3(23) of the Act). The rules in question are Rules 14 and 18 of the Rules under the Act. Both these rules require the Labour Officer to fix the place and time for the employees' meeting to hold election. The question for the Remembrancer of Legal Affairs' opinion is whether the Labour Officer is empowered by section 25(2) of the Act to compel the millowners to let the employees hold the meeting in the mill compound.

2. Section 25(2) of the Act provides that for the purpose of exercising his powers, a Labour Officer may, after giving reasonable notice, enter any place used for the purpose of industry. This gives the Labour Officer power to enter personally, but not power to requisition the mill premises (or compound) for the employees to enter and hold their meeting. The Labour Officer can only exercise his power to fix the place of meeting under Rules 14 and 18 without encroaching upon the millowners' private rights. Hence where the millowners object to permit use of their premises for the meeting, the Labour Officer has no power under section 25(2) of the Act to compel them to do so.

Id/----------12/5.

Remembrancer of Legal Affairs.

U.R. to the P. & S.D., No.4370 dated the 13th May 1941.

It transpires from the report of the Conciliator, Ahmedabad, that the Ahmedabad Cotton Manufacturing Company, Ltd., used to work for nine hours a day till the afternoon of the 6th January 1941 when the mill management decided to work one hour extra for some days in order to make up for the loss of work due to holidays in the preceding and the following week. Accordingly a new time-table was communicated to the Factory Inspector and posted on the notice board at the mill gate. Some of the workers of the spinning department objected to the new time-table On the 7th January about a hundred operatives of the spinning department presented themselves for work at 7-30 A.M. instead of at 7 A.M. as required by the new time-table and they also left their work at 5-30P.M.instead of at 6 P.M. On the next day also they came to work at 7-30 A.M. but were refused admission by the mill authorities. The parties took the matter to the Industrial Court which held that (1) of the action of workers in effecting a partial cessation of work in concert without giving notice under section 28 of the Bombay Industrial Disputes Act, 1938, amounted to an illegal strike, (2) the action of the mill authorities in refusing to employ the workers did not amount to a lockout as defined in section 3(19) of the Act and (3) the action of the mill authorities in dismissing the workers otherwise than as provided in the Standing Orders or without going through conciliation proceedings amounted to an illegal change. Subsequently the Textile Labour Association wrote to the mill offering to send workers back to work immediately in view of the decision of the Industrial Court; but the mill authorities declined the offer and demanded an explanation under the Standing Order No.22. When thw workers refused to do so the mill authorities issued notes of dismissal on the 24th March 1941. In the meantime, finding that the mill authorities were not disposed to take back the workers the Textile Labour Association as the representative of employees gave on 17th March 1941 a notice in Form L to the Mill authorities asking for reemployment of the operative who were on the

muster rolls on the 7th January 1941 but had been dismissed for having gone on the illegal strike consequent on the mill's decision to take 10 hours' work per day for some days and for payment of their usual wages for the period during which they were out of work. As no agreement was reached by the parties a statement of the case was forwarded to the Conciliator who thereupon held conciliation proceedings. The mill authorities raised four preliminary objections, three of which were as follows:-

(1) The notice of change given under section 28 was not legal inasmuch as it was given by the Association instead of by the employees.

(2) The change of which notice was given did not relate to an industrial matter mentioned in Schedule II to the Act.

(3) The workers were not employees of the mill when the notice of change was given.

In view of these objections the mill authorities contended that the conciliation proceedings were ab initio void but expressed their willingness to go into the subject matter of the dispute only without waiving their right to raise the legal points involved if necessary before a competent tribunal. Without deciding these preliminary objections the Conciliator tried to bring about a settlement, but failed. He submitted a full report of the conciliation proceedings to the Chief Conciliator under section 38(2) who was forwarded the same to Government under section 38(3) The question for consideration of the R.L.A. is whether the report should be published by Government under section 38(4).

2. Sections 28(2) and 34 of the Bombay Industrial Disputes Act, 1938, read with the Forms L and M prescribed by the Bombay Industrial Disputes Rules, 1939, clearly show the notice of change has to be given and the settlement of the case has to be forwarded by the secretary of the union, representatives of employees or the Labour Officer as the case may be on behalf of the employee or employees who desire a change. In the present case the notice given under section 28(2) is in Form L and the

statement of the case forwarded under section 34 is in Form M and both of them have been signed by the Secretary of the Textile Labour Association which is the representative of employees as defined in section 3(29) Consequently the requirements are fully satisfied, and objection (1) appears to be without substance.

3. The next point for consideration is whether the change demanded relates to an industrial matter. The change relates to two matters- (1) re-employment of the workers who were on muster rolls on 7th January 1941 but had been dismissed and (2) payment of wages for the period during which they were out of work. The latter is clearly an industrial matter (see section 3(14) and clause 9 in Schedule II). The former is also an industrial matter (see clause 3 in Schedule II read with section 3(14)of the Act). It is true that the dismissal of these employees was already declared by the Industrial Court to be illegal and the decision of that Court being binding on both parties under section 59, the question of dismissal could not form the subject matter of conciliation under Chapter VI of the Act. But immediately after the notice of change was given under section 28(2), the mill authorities again passed an order of dismissal of these workers. Thereafter the conciliation proceedings commenced. This means that although technically there was no cause of action at the time when the notice was given, it arose immediately thereafter and both parties to the conciliation preceeded in the conciliation on proceedings on the assumption that this order of dismissal was the subject matter of dispute. In these circumstances it appears that both matters specified in the notice were industrial matters. The employers objected to the change. Consequently objection (2) also fails.

4. The thrid objection is that the workers who gave notice of change were not employees of the mill and consequently they could not give any notice of change under section 28(2) . This contention is devoid of force. The definition of the term "employee" in section 3(10) affords a sufficient answer to the objection.

5. There is thus little to support the contention that the conciliation proceedings were not validly initiated. Section 38(4) is imperative, and I can see no legal objection to the report ofthe Conciliator being published under that section.

Id/----------12/7.
Remembrancer of Legal Affairs.

U.R. to P. & S . D. , No.6161, dated the 15th July 1941.

D.S. (Beofre Issue)
A.L.R. (" ")
S.A.S. (" ")
A.S. (" ")

DYR.

The agreement in the present case was arrived at between E.D.Sassoon Mills and the elected representatives of workers of Spinning Section Day and Night Shift, on the 4th June 1941 and a memorandum of the agreement was drawn up on the same day; but it was signed by the representatives of employees on the 6th June 1941. In the absence of a specific recital to the contrary an agreement comes into operation on the day on which it is executed by both parties. But in the present case the agreement clearly provides that it should come into operation forthwith, i.e. from 4th June, 1941, on which day the agreement was arrived at as stated therein. The affixing of signatures of the representatives of employees to the agreement on the 6th June, 1941 and the subsequent registration have the effect of bringing the agreement into operation on the 4th June, 1941 in view of sections 30 and 32 of the Bombay Industrial Disputes Act, 1938. That being so, the change made by the E.D. Sassoon Mills on 5th June, 1941 would not be an illegal change within the meaning of section 73.

2. The expression " agreement is arrived at" used in section 73 and in the opening subordinate sentence of section 30(1) has evidently no relation to any memorandum or writing setting out the agreement, much less to such writing being signed and registered. The agreement is however technically called " a registered agreement" when the writing is signed and registered under the procedure of section 30. Section 32 requires that if an agreement is arrived at and registered under section 30, the changes referred to in the agreement shall come into operation from the date stated in the agreement or if no date is stated therein from the date on which it is recorded by the Registrar. There appears therefore no conflict between sections 32 and 73 of the Act, in the interpretation of the expression " agreement is arrived at".

Id/------16/7.
Remembrancer of Legal Affairs.

U.R. to P.& S.D.,No.6272, dated the 18th July 1941.

Presumably what the Labour Officer means by this reference is that the authority to decide what are the ' relevant documents' within the meaning sub-section (2) of section 25 should be the Labour Officer. In view of the reply in the linked case, and in order to put the matter beyond controversy, there is no legal objection to replacing the words " all relevant documents which are necessary" by the words " such documents as he may deem necessaey", in section 25(2) of the Bombay Industrial Disputes Act, 1938.

Id/----- 22/8.
Remembrancer of Legal Affairs.

U.R. to P.& S. D. , No.7572, dated the 28th August 1941

D.S. (Before Issue)
A.L.R.(" ")
S.A.S (" ")
A.S. (" ")

DYR.

Section 25(1) of the Bombay Industrial Disputes Act, 1938, provides that a Labour Officer shall exercise the powers conferred and perform the duties imposed on him by or under this Act. Sub-section (2) enacts that for purposes of exercising such powers and performing such duties a Labour Officer may, after giving reasonable notice enter any place used for the purpose of any industry or as the office of any union and shall be entitled to call for and inspect all relevant documents which are necessary for the due discharge of his duties and powers. Under section 55 a Labour Officer is given power to apply to the Industrial Court to decide whether any strike or lock-out or any change is illegal. Where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are necessary to its execution (see Maxwell 5th edition, page 309) Before exercising the powers under section 55 itis necessary for the Labour Officer to consider whether any strike or lock-out or any change made is illegal and for that purpose to examine all relevant documents relating thereto under section 25(2) The complaints made by the employees of Arwind Mills in the present case of wrongful dismissal and illegal reduction in wages allege illegal changes within the meaning of section 55 read with section 73. Consequently the Labour Officer, Ahmedabad, is entitled under section 25 to enter the premises of the Arwind Mills and to call for and inspect all the relevant documents under section 25(2) to satisfy himself whether any illegal change existed as alleged with a view to exercising his power under section 55

necessary.The view taken by the Labour Officer, Bombay, and the Political and Services Department is correct.

Id/----------22/8

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No.7571, dated the 28th August 1941.

D.S. (Before Issue)
A.L.R.(" ")
S.A.S (" ")
A.S., (" ").

DYR.

The question referred to R.L.A. for consideration is whether the recommendations of the Textile Labour Inquiry Committee that textile mills must close work for a period of at least six consecutive hours between the hours of 12 midnight and 7 a.m. except when a three shift system is permitted and that a two shift system should be allowed only on the basis of two shifts of 8½ hours each exclusive of half an hour's interval for rest for each shift, can be given effect to by the amendment of the existing standing orders settled under the Bombay Industrial Disputes Act, 1938.

2. Sub-section (1) of section 26 of the Bombay Industrial Disputes Act, 1938, provides that every employer in respect of any industry or occupation to which the section has been made applicable shall within two months from the date of such application submit to the Commissioner of Labour for approval standing orders regulating the relations between him and his employees with regard to all industrial matters mentioned in Schedule I. Sub-section (2) of the said section provides that on receipt of such standing orders the Commissioner of Labour shall, after making such inquiry as he deems fit and after consulting all interests concerned in the industry, settle the said standing orders. Schedule I to the Act mentions shift working. Under the above provision a standing order can be settled with regard to shift working. The matters to which the recommendations of the Committee relate would be covered by the expression "shift working" used in entry No.3 in Schedule I and consequently these recommendations can be given effect to by the amendment of the existing standing orders settled under the Act.

Id/----------8/8.
Remembrancer of Legal Affairs.

U.R. to P. & S. D. No.7055 dated 11th August 1941.

Submitted.

Sub-section (2) of section 62 of the Bombay Industrial Disputes Act,1938, provides that in cases where conciliation proceedings in regard to any industrial dispute have been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings. It follows that under this section a strike relaing to any industrial dispute shall not be illegal if it is commenced within two months of the completion of the conciliation proceedings of the dispute. The question for R.L.A's consideration is whether the employees of other mills in the same industry and in the same local area who had not associated themselves with the dispute under section 29 of the Act can join the strike and if so whether that strike can be considered to be legal.

2. Sub-section (33) of section 3 of the Bombay Industrial Disputes Act,1938, defines a strike as meaning a total or partial cessation of work by employees employed in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work to accept work where such cessation or refusal is in consequence of an Industrial dispute in any industry. An industrial dispute is defined in sub-section (13) of the section as meaning any dispute or diff-

kkference between an employer and employee or or between employers and employees and which is connected with any industrial matter as defined in Sub-section (14). Section 28 provides for the giving of notice by employers or employees who, as the case may be, desire a change in the standing orders settled under section 26 or section 27 or in respect of any industrial matter. Under section 29 provision has been made for other employers or employees engaged in any industry or occupation in the local area to associate themselves with the employers or employees who have been given a notice of change under section 28. Sub-section(4) of the section provides that the other employers or employees shall for the purposes of the Act be deemed to be affected by such change. But this is only on an intimation being given under sub-section (1) or (3) of the section. If no such intimation is given the other employees cannot be said to have associated with the employees who have given notice of change under section 28. They will not be affected by the change nor shall they be bound by the conciliation proceedings held in respect of the dispute. They cannot consequently join the strike of the employees who had started the dispute and if they join such strike, the strike will be illegal. The view taken by the Commissioner of Labour in para 3 of his U.O.r dated 21-7-41 is correct.

Id/----------25/8.

U.O.R. to P.&.S.D. No.7598 dated 28-8-1941.

DYR.

The effect of rule 12 is only to determine which of the two or more competing unions is to be accepted as the representative of employees for the purposes specified in that rule. If there be no union at all which can be looked upon or claims to be the representative of employees within the meaning of section 3(29)(i) or (ii) of the Bombay Industrial Disputes Act, 1938, with the result that the representative of employees has to be determined under section 3(29)(iii) - as in the present instance- or (iv) as the case may be, rule 12 will not come into operation at all. Consequently in the present instance the representatives elected in accordance with section 3(29)(iii) alone and not the Textile Labour Association, Ahmedabad, none of the members of which can be looked upon as "employees directly affected by the change" within the meaning of section 3(29)(ii), must be treated as representative of employees within the meaning of section 3(29). Hence the contention of the mill management referred to in paragraph 3 at page 3 ante is, in law, untenable.

Id/----------24/9
Remembrancer of Legal Affairs.

U.R. to the Poll. & Services Deptt, No.8465, dated 26-9-1941.

D.S. (Before Issue)
S.A.S (" ")
A.S. (" ").

DYR.

Seen and returned.

2. The view taken by the Chief Secretary at pages 41, 42 and 43 is correct. Under the terms of rule 18 of the Bombay Industrial Disputes Rules, 1939, it would in this case be obligatory on the Labour Officer to hold meeting of the employees affected by the proposed change. The refusal of the Labour Officer to hold the meetings referred to in rule 18 cannot, in law, be justified on the ground that the actual demands of the signatory employees are on subsequent informal enquiry found to be slightly different from those set out in the written representation made to the Labour Officer,

Id/----------28/11.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.353. Confl. dated the 28th November1941.

D.S. (Before Issue)
A.L.R.(" ")

DYR.

A revised draft notification is sent herewith. It appears that the notified area of Sabarmati has been converted into a village under the Village Panchayats Act with effect from 1st April 1941. P. & S.D. should verify this fact before issuing the notification.

2. The proviso to sub-section(2) of section 76 of the Bombay Industrial Disputes Act, 1938, states that before giving a direction under this section, the Provincial Government may, in such cases as it deems fit, make in the prescribed manner a reference to the Industrial Court for its opinion. Its object is to enable the Provincial Government to obtain the opinion of the Industrial Court in cases in which it considers that such an opinion would be helfpful in arriving at a decision. The provision that the reference is to be made in the manner prescribed is of a purely directory nature. Consequently the mere fact that the manner of making a reference has not been prescribed will not debar the Provincial Government from exercising its right to make such a reference. A reference to the Industrial Court in the cases mentioned in the P. &.S.D. note dated 2-12-41 would therefore be competent. In the absence of rules prescribing the manner in which the reference is to be made, such reference can be made in any manner Government deems fit, e.g. by a letter to the Registrar of the Industrial Court. Such letter should clearly state all the relevant facts and the points on which the opinion of the Industrial Court is required. Copies of the relevant papers may also be sent along with such letter to the Industrial Court.

Id/----------13/12.
Remembrancer of Legal Affairs.

U.R. to P.&.S.D.; No.10769, dated the 15th December 1941.

NOTIFICATION.

Political and Services Department.
Bombay Castle 194

No. Whereas an award has been made on the 26th April 1940 by the Industrial Court(hereinafter called the "said award") in the matter of a submission entered into between the Textile Labour Association, Ahmedabad, and the Ahmedabad Millowner's Association, agreeing to refer the dispurt regarding the grant of dearness allowance to cott on mill operatives in Ahmedabad to the arbitration of the Industrial Court;

And whereas a supplementary award has been made on the 15th September 1941 by the said Court(hereinafter called the "supplementary award") in the matter of revision of the original award;

And whereas the said Textile Labour Association is a representative union of employees in the cotton textile industry in the local area comprising the Ahmedabad City Municipal Borough. the Ahmedabad Cantonment and the notified area of Sabarmati;
village.

And whereas the Provincial Government of the opinion that the said awar as modified by the supplementary award shall be made binding upon the employers specified in Schedule A annexed hereto and their employees engaged the said industry in the said local area, under sub-section (2) of section 76 of the Bombay Industrial Disputes Act, 1938

And whereas the Provincial Government is of the opinion that the supplementary awar shall be made binding upon the employers specified in Schedule B annexed herete and their employees engaged in the said industry in the said local area, under sub-section(2) of section 76 of the said Act;

And whereas an opportunity of being heard under sub-section (2) of section 76 of the said Act has been given to the said employers and their employees;

Now, therefore, in exercise of the powers conferred by sub- section (2) of the said section 76 the Government of Bombay is pleased to direct that-

(a) The said award as modified by the supplementary award shall be binding upon the employers specified in the said Schedule A and their employees engaged in the said industry in the said local area; and

(b) the supplementary award shall be binding upon the employers specified in the said Schedule B and their employees engaged in the said industry in the said local area.

Schedule A.

(To be filled in by P . and S.D.)

Schedule B.

(To be filled in by P. and S.D.)

By order of the Governor of Bombay,

Chief Secretary to Government.